



Human Rights Standards between Recognition, Confirmation, Affirmation and Change

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A. Contemporary Challenges on Human Rights and Global Justice¹

Mary Robinson²

I. Gender Matters: Personal is Political

I have been asked to speak on a number of contemporary challenges on human rights and global justice, and I will begin with gender equality. I had to think about gender equality very early in my life, because I was the only girl wedged between four brothers, two older than me and two younger than me. So of course I had to think about gender equality, human rights, even using my elbows! My parents were medical doctors and they assured me that I had exactly the same rights and exactly the same opportunities as my four brothers. But Irish society at the time was not telling me that. The woman's place was in the home; it was in our constitution. And there was no sense of equality in Ireland at the time.

I think that's what brought me to want to study law. I wanted to study law as an instrument for social justice. And after four years in Trinity, in the honors course in legal science, I was lucky enough to get a fellowship to the Harvard Law School. I remember very vividly that year – 1967 to 68 – and the class of 1968. It was a particular year as American law student contemporaries were worried about an immoral war, as they saw it, the war in Vietnam. Some of them were actually trying to dodge the draft; and in April Martin Luther King was assassinated; and just after I graduated, Robert Kennedy was assassinated. At the time, those were two horrendous and notable assassinations. It wasn't, I think, like today, when we have so much violence, that issues like that don't have the same resonance.

What I recalled from that year in Harvard was that my young friends and other students were taking leadership. They were actually trying to make a difference. They were going into the civil rights program or the poverty

1 Transcript of speech delivered by Mary Robinson during the 2024 Tang Prize Master's Forum on the Rule of Law, held at Soochow University on 30 September 2024. The speech is based on the outline that was read in the Forum

2 Mary Robinson is an Irish politician who served as the president of Ireland from December 1990 to September 1997. Following her time as president, Robinson became the United Nations High Commissioner for Human Rights from 1997 to 2002.

program in the southern part of the United States. And that was so different from the Ireland that I was growing up in. Because in Ireland you waited, and you waited your turn, and you waited. And if you were a woman, you didn't have much turn to wait for.

When I came back to Ireland and started to practice law in 1968, there was an election in early 1969 of the two houses of our parliament, and in our Senate, which has 60 members and there are six university seats. Traditionally, and inevitably, it was elderly male professors who would get those six seats. And because of my experience in Harvard, and what my husband Nick, or my husband-to-be Nick, called my Harvard humility – he meant the opposite, not humility, but somehow a kind of willingness to take on and change things – I challenged the system and got the support to be elected to the Senate at the age of 25.

The reason I recount that is because it opened up further opportunities for me. I had also in 1969 become the Reid professor of constitutional and criminal law in Trinity College. It's a trust that established the professorship for a practicing young lawyer. You had the title of professor and a very poor salary; it wasn't a real professorship in every sense, but it was nonetheless a professorship. That meant I was teaching law as a professor; I was practicing law as an advocate, as a lawyer, as a barrister; and I was helping to make some law in the Senate. I was trying to use all three to further gender equality, human rights, and open up Irish society.

1. In the Irish Senate

I want, in particular, just to take a moment or two to talk about the gender equality part of that. In 1971, I introduced a bill into the parliament, into the Senate, to legalize family planning in Ireland. The law at the time was that married women could only avail of the contraceptive pill if they had written permission from their doctor that they had cycle regulation problems. And I remember we used to joke as women that it must have been the Irish weather that so many women had cycle regulation problems! It was also against the law to buy or sell a condom – it was not against the law to use it – just to buy or sell.

There was a lot of discussion among young people, but Ireland was a very conservative country. When I introduced this bill on family planning, I suddenly changed from being a somewhat popular figure – because I had been elected to the Senate at a young age – to a very, very unpopular figure. I got hate mail, hate letters. It was the time obviously before social media. But those

hate letters were very painful. I was being called a witch from hell, and I was told that I was undermining all the morals in Ireland, and that this is a terrible thing to do. They were very rough letters, tough letters. I had been very affected by those letters, so my husband decided to burn them. Or we decided together. Actually, we regretted it afterwards, because we are natural archivists, and we now regret the loss of that indication of the views and the opinion at that time, about reproductive health and rights and family planning.

The members of the Senate didn't want to give approval to the bill being published. It is the only example so far in Irish legislative history that a measure put forward by a senator, with the help of two male senators, did not get published as a document of the Senate. You have to have three senators to support a bill. Of course, everybody knew what was in it. It was in all the newspapers. It was written up. It was criticized. It was approved by some, but it was not official. In fact, one senator came in with white gloves, he would not even touch the order paper – you cannot even know how strong the adverse opinion was in this very Catholic Ireland of the time. But we persisted. In 1973, we had switched the subject to health. In 1973 we moved it from a criminal law bill to being a health family planning bill; and that actually got printed and got a second reading. We then withdrew it, because the government of the day said they would bring in legislation on family planning. And when they did, half the cabinet voted against it and that bill didn't succeed. It took another seven years for a different government to actually change the law. So, nine years, more than nine years in all it took to get that law changed.

I also recall working with some other senators on other measures like removing the status of illegitimacy for children. Under our law, children born outside marriage were regarded as illegitimate. We felt this was a wrong word entirely for a human being. Again, when we put forward the bill, we withdrew it in favor of a government bill. We should have come in much more quickly.

And there were many other examples of discriminations. I remember a time when a very good friend of mine, a poet called Eavan Boland, a very good Irish poet and close friend who sadly died a year or two ago came to me for advice. She was a member of the women's liberation movement and I was their lawyer. And she came to me and she said, "I'm going to a meeting, can you give me seven laws that discriminate against women?" And I said, "Eavan, why only seven? I can give you more." And she replied, "Well, no, seven's a good number, that's all I could remember." But that again gives you an idea that we were not short of laws.

2. Cases in Court

One of the court cases I was involved in which I will come back to, was about women not being able to serve on juries. Women had to retire from the civil service when they became married. There were a whole lot of legislative discriminations. But it was important to be able to raise these issues and try to bring in legislation that would change the law. But perhaps some of the cases that I was involved in, in the courts, were more impactful in the sense that it was possible to have more success, let me put it that way. It was possible to win more cases. And I recall in particular the cases that made the difference, not just for the individual applicant, but for a whole range of people. And they're the ones that I just want to spend a little bit of time talking about.

A case that I particularly enjoyed working on started without me. It started with the client herself. Josie Airey was a poor woman from a city in the south of Ireland called Cork. Her husband was beating her. There was no divorce in Ireland. She had already got an order from the lowest court to stop the beating. But it didn't stop. So, she wanted to get a separation. No divorce, just a separation. But to do that, she would have to go into the High Court. And the High Court was complex. She went to lawyers, but no lawyer would take her because she was very poor. She couldn't afford to pay. So she wrote a letter to a body she had heard of in the newspapers called the European Commission on Human Rights. The letter was full of irrelevance, but there was something in that letter, and the lawyers in the Commission on Human Rights decided to send this to the Irish government and see what they say. So, they sent the letter to the government and the government of course said, there is no barrier to a woman going in as an individual plaintiff; she can go into court.

The lawyers of the Commission were not entirely satisfied. They felt anybody can walk into the rich hotel, but can they afford to ...? It's one thing to say, it's accessible, but what if it's complicated and procedural and difficult? Which, of course, the High Court was. So, the Commission on Human Rights provided legal aid to Josie Airey, and that's where I became involved as a barrister.

It was an extraordinary pleasure in many ways to plead her case and to show that this was contrary to article eight of the European Convention – protection of family life. The reason why I was so excited about it was, it was clear to me that the outcome would mean that Ireland would have to bring in civil legal aid. There had been a lot of efforts of various sorts, but it was that case that required the Irish government to bring in civil legal

aid. And actually, because it was a case of a European court, it meant that other European countries should also consider bringing in civil legal aid. Another case I worked on involved two women who had been accused of a minor crime that allowed a jury trial. But they did not want a trial with only men, and women were barred from the jury. As we were researching and arguing the case, we were aware that in the United States exactly the same issue was being argued before the Federal Supreme Court there. Just before this case called DeBurke and Anderson against Ireland came for hearing before the Supreme Court, it was decided favorably in the United States. The United States Federal Supreme Court decided that women could not be discriminated against and refused to be able to serve on juries. When we came to the Supreme Court to plead our case, the chief justice of the United States sat in the court. He was visiting Ireland and he was very intrigued to know about the same. They just invited him to sit in for the morning, which was very unusual. It's just a memory of how sometimes jurisdictions can help each other, very different jurisdictions. And we did succeed in the Supreme Court in Ireland.

I just want to mention the last case that I pleaded in court, because it was a very impactful case for poor women in Ireland. Our social welfare code was based on the husband, the man, and everything flowed from that. When married women got unemployment benefit, it was less than a man would get and for a shorter period. So, two women, Ms Carter and Ms McDermott, wanted to litigate that. When we went to the High Court, the president of the Court at the time felt that there was some merit in our case, but because of European legislation he said, "I'm not going to decide that myself, I'm going to refer it to the court in Luxembourg for a definitive ruling on whether the directive on equal pay and equal opportunity of the European Union was directly applicable in Ireland", and allowed Ms Carter and Ms McDermott to have the standing to plead it.

So, the president of the High Court referred the case to the European court. And I argued that case before the European court and the European court gave a very strong ruling in our favor. It went back to the High Court for decision. The High Court president understood the implications of giving it the full implementation that Ms Carter and Ms McDermott had been discriminated against in their social welfare benefit, unemployment benefit. He kind of gave a partial judgment that, as of the future, this would apply. But he was not prepared to consider, in their case, the back payment of what they had lost, in not getting the unemployment benefit. He was aware there were hundreds, if not thousands of similar married women who had been

discriminated against over the years and, therefore, he made a ruling that it would only apply as of the future.

We were not happy with that because the court ruling of the European Court had been much broader than that and hadn't implied only for the future. So, we appealed to the Irish Supreme Court and the Irish Supreme Court decided to go back to Europe. Meanwhile, I was nominated to be a candidate for the presidency, so I had stopped practicing law. But then this case came up for hearing in October of 1990 and the election was in November.

I said that I have to do it. It's so complicated, nobody else can come in now and take this forward. I need to go for my clients. And I remember, you know, thinking, do you want to win, or do you want to go back to law? I mean, make up your mind. And I thought just let me do this one case.

So I went back to the court of the European Union in Luxembourg and made the case that their ruling, their initial ruling, had clearly implied that it should be retrospective, that the women should be able to get their money. The court reserved their judgment and mentioned when the advocate general would give a ruling, which is what happens in the court in Luxembourg, as I'm sure some of you would know. The lead justice in the court said, "this may or may not be of interest to you, Ms Robinson", meaning either you will be president, or you will still be doing law. And actually, by the time the ruling came, I was elected president, so I didn't go back. I heard the final verdict and was pleased, but I wasn't in court. That cost the Irish exchequer some £300 million at the time. So, it was a very significant case for gender equality for women. I was trying to use it as an illustration. It's lovely when you can take a case for individual clients that will affect a whole sector, that will affect someone in a broader sense.

3. Participation in Public Life

The third way in which I tried to support gender equality was through my participation in public life. I always promoted the importance of gender balance and gender equality in speeches that I made, including going forward for election a number of times over those 20 years.

I had an incident, which did annoy me, because it was discrimination outside Ireland in something I was involved in and surprised me. It happened in Belgium in Brussels. In 1971, I was invited as the only woman to serve on the Vedel Committee on enlargement of the European Parliament. This committee had members of the six original European Union members – European community members, as it was then – and then the

four applicant members: the United Kingdom, Ireland, Denmark, and Norway. Norway eventually voted against joining, so you had three new members. But we were looking at what impact this would have on the European institutions. This was a serious piece of work, and it was recognized that we would have to go back and forth to Brussels.

They decided that in order to give us our expenses of travel and our per diem, because there was no salary involved, that we could open a bank account. When they came to me they said, “oh, but you’re a married woman”. And I said, “Yes”. They said, “Oh, you need the written permission of your husband in Belgium to open a bank account”. I said “What?” Because this did not apply in Ireland. Of course, my wicked husband was only delighted to hear this sentence! But anyway, I became Ms Robinson for once and blurred the idea that I was married and all was well. But I think that what I want to illustrate is that there were so many forms of discrimination, it wasn’t that surprising that another country would require the written permission.

By the time I was going forward as the candidate of the Labour Party, but running as an independent in 1990 for election, I was very much part of a broader women’s movement in Ireland. That women’s movement was significant. When I started, I was very much an outsider, a hundred-to-one outsider, because it was assumed that the party that had always had the presidency would have it. The deputy prime minister was running. He was a shoe-in, as we would say in Ireland; he was a certainty. But gradually, because I had more time, I made the case and the case became more popular, and I was aware that I was gaining ground. It was the women’s movement that made all the difference. Not just the women’s movement in that progressive sense, but a lot of women who are quite conservative, maybe didn’t have careers outside their home, quietly decided to vote differently from their husband or father for the first time. And I heard so many stories. I heard a story of a young woman some years later. The way she put it, summed it all up. She said, “I want to shake your hand.” She said to me, “You are my first vote. And when I told my father, how I voted for you, he nearly killed me!”

So, when I was accepting the nomination, the night I was elected not the inauguration, I thanked *Mná na hÉireann*, which means women of Ireland in a pejorative way. Up to then, there was a way of describing women who weren’t active in life, who weren’t part of the progressive women’s movement, who were housewives, who stayed at home. But I was valuing what they had done. And they understood that perfectly. And it kind of

helped me as president to broaden the whole sense of gender equality, just by lifting Mná na hÉireann. I thanked Mná na hÉireann, who instead of rocking the cradle, rocked the system.

It kind of made it easier to have a broader, more integrated sense of gender equality. It wasn't just women who were lawyers or journalists or trade unionists or had careers as business women. It was all women in Ireland who felt part of this gender equality. And I made it very clear that I was determined, as president, to feel that I would do a better job precisely because I was a woman. I was absolutely determined to convey that at all stages. And that was because I felt I had been fortunate enough to get the confidence of women that had helped me to get elected. Of course, it was a universal election. So, men also elected me I'm glad to say, but women changing their vote from the traditional voting was the significant part.

II. Human Rights Protection

Now I come to human rights protection in that sense. I'd like to just reflect on when, after the seven years as president of Ireland, on the 12th of September of 1997, I became the UN High Commissioner for Human Rights, I found that my horizon had to broaden really significantly. Up to then, it was Ireland and Europe. And Europe was very helpful to Ireland: the European Court of Human Rights and the European Union Court were helping Ireland to open up and make progress. Now, I could be asked questions at press conferences about countries or cities or human rights problems somewhere in the world that I hardly even knew about. That was kind of a strange burden of knowing that you were responsible for human rights throughout the world.

1. 1997 Reform Package of Kofi Annan: The Holistic Nature of Human Rights

And even more significantly, I think, before I became UN High Commissioner, Kofi Annan, who had become Secretary General in January of that year, had his 1997 reform package. The UN is always reforming itself or should be. Anyway, this 1997 reform package made the office, the new office of High Commissioner for Human Rights. The only one to be part of the four executive committees of the UN: the Executive Committee on Peace, on Development, on Humanitarian issues, and on Economic and So-